

INTEROFFICE MEMORANDUM

DATE: February 29, 2012 **PHONE:** (760) 366-4124

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THRU: Gary Roth
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TO: Dennis Christy
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SUBJECT: Fatal Officer Involved Shooting:
Involved Deputies: Sheriff's Deputy Allen Freeman
Decedent: Merlyn Arthur King, D.O.B. 02/08/79, Transient
Date of Incident: May 29, 2011, 9:32 am
Location of Incident: 57980 State Route 62, Yucca Valley, CA 92252
Investigating Agency: San Bernardino County Sheriff's Specialized Investigation Division, Homicide Unit; Detective Robert Vaccari, Case Agent.
Agency Report Numbers: San Bernardino County Sheriff's Case # DR 231101201/ H#50-11
STAR Number: San Bernardino County District Attorney Star #2011-47210

STATEMENT OF FACTS

The following statement of facts is derived from interviews of the involved parties and other information and evidence as gathered by the San Bernardino County Sheriff's Specialized Investigation Division, Homicide Unit, during the course of their investigation.

SUMMARY

On May 29, 2011 at about 8:50 am the Morongo Sheriff's Station received a call from a concerned citizen indicating there was a suspicious subject acting strangely at the park

and ride parking lot on State Route 62 in Yucca Valley. The reporting caller told the dispatcher that they were of the belief that the subject was under the influence. The caller stated a concern for others whom may come into contact with the subject.

Deputy Freeman responded to the call. Upon arrival at the park and ride lot located at the corner of Kickapoo Trail and State Route 62, Deputy Freeman saw a white male adult subject standing in a planter in the park and ride lot. The subject was acting strangely and talking to himself.

Deputy Freeman attempted to contact the subject, later identified to be Merlyn King. The subject was initially cooperative with Deputy Freeman and provided his identification. King made bizarre statements that were of a concern to Deputy Freeman. Deputy Freeman attempted to conduct a patdown search of the subject but the subject became uncooperative.

The subject told the deputy he was Black Ops. King began to walk towards Deputy Freeman. Deputy Freeman gave him multiple commands to back off and get down. Deputy Freeman removed his taser and pointed it at King while continuing to order him to stop and back off. Deputy Freeman deployed his taser at King but it was not effective.

King was able to swipe the taser wires from his body pulling the taser from Deputy Freeman's hand. Freeman then transitioned to his firearm while continuing to tell King to back up and get down. King continued to ignore the deputy's commands. Freeman, fearing that King would take his firearm as he continued to lunge at him, fired one round striking King in the finger.

King continued to advance on Deputy Freeman even after being shot in the hand. Deputy Freeman continued to back up as King continued to advance ignoring the deputy's commands. King advanced, closing the gap between the two of them and lunged at Deputy Freeman. Deputy Freeman, in fear that King was going to disarm and shoot him, fired one more round hitting King in the chest. King stumbled back and eventually fell to the ground. Freeman kept King at gunpoint until other deputies arrived. Medical aid arrived and pronounced King dead at 9:45 a.m.

SUMMARY OF REPORTING PARTY **SUZANNE B. INTERVIEW**

Suzanne B. was interviewed on the date of the incident at 3:22 pm. She told Detective Warrick that on the morning of the incident she pulled into the park and ride lot at about 8:45 am. She pulled into the lot to meet a friend. She observed a white male subject standing in the middle planter area of the lot. The subject was standing with his hands in the air, head back, waving his arms around. She indicated to the detective that she could not hear what he was saying but she did notice that he appeared to be talking to himself.

She drove to the lower area of the parking lot as she continued to watch the subject.

She noticed that he did not appear to have any personal belongings nor did he appear to have a vehicle. She eventually called 911 to report the subject due to his bizarre behavior.

SUMMARY OF WITNESS **ARTHUR G. INTERVIEW**

Arthur G was interviewed by Detective R. Warrick from Sheriff's Homicide. The interview was conducted at the witness' residence and was recorded. The witness lives in a mobile home park near the scene. Initially the witness was not cooperative but did come forward and was interviewed on July 6, 2011.

The witness told the detective that he was home alone on the morning of the incident watching television. He heard yelling from the park and ride lot across the street from his residence. He looked outside his window and saw a Sheriff's Deputy holding a gun and yelling commands at a subject he described as looking transient. He heard the deputy yell at the subject to "get down."

Arthur G. watched the incident unfold from outside his residence. He told Detective Warrick that the deputy circled away from the subject at least three times. He heard the deputy command the subject to get down at least twelve times. During the incident the witness saw that the subject had his hand extended reaching out towards the deputy. He also saw that the subject appeared to be bleeding from his other hand. While circling away from the subject, the deputy appeared to speak into his radio using his shoulder microphone.

He observed two witnesses approach the deputy at which time he told them to stay back. The witness estimated that he watched the deputy and the subject for about fifteen minutes. He then saw the subject take two stutter steps toward the deputy with his arm extended towards the deputy. The deputy then fired one shot at the subject. The subject jolted back before collapsing after about 20 seconds. Arthur G. estimated that the subject was about 7 to 10 feet from the deputy when the final shot was fired.

The witness also told the detective that throughout the incident the subject was not acting normally and appeared to look like a zombie.

SUMMARY OF WITNESS **EARL C. INTERVIEW**

Detectives Steve Pennington and Robert Warrick interviewed Earl C. on the date of the incident at the Morongo Sheriff's Station. Earl C. resides at the Yucca Valley R.V. Park which is northeast of the park and ride lot. The witness told detectives that he was outside his residence when he heard two males yelling.

He heard one male say "Fuck you" while the other yelled to "get down." The witness walked west towards the yelling and then heard a single gunshot. He then called 911 to

report the incident. He was on the phone with the 911 operator as he continued to the area where he could see what was going on.

When he got within view of the park and ride lot he saw a Sheriff's vehicle and a Sheriff Deputy with his gun drawn. The deputy was backing away from the white male adult who was yelling "leave me the fuck alone." The subject was continuing to go "after the officer." The deputy continued to back up as the subject was coming at him with his arm outstretched.

He heard the deputy command the subject to "get down" five times. He also heard the deputy yell to the subject to "get back" five times. He heard the subject tell the deputy "fuck you" five times. Earl C. described the subject as acting though he "were on drugs." The subject was also acting though he thought he was superman continuing to advance on the deputy ignoring his commands. As he continued to advance on the deputy, the deputy continued to yell "get back" and "get down." The witness estimated that the subject was only about five feet from the deputy when he fired another single shot. The subject then fell to the ground as the deputy radioed for medical assistance.

Earl C. opined to the officers that from what he saw the deputy had no choice to shoot the subject and that he believed the situation was perhaps a "suicide by cop."

SUMMARY OF WITNESS JONATHAN M. INTERVIEW

Detective Smith interviewed witness Jonathan M. at the Morongo Sheriff's Station on the date of the incident at about 1:30 p.m. Jonathan M. also lives at the Yucca Valley RV Park which is east of the park and ride lot. The witness was outside his residence near his vehicle when he heard a commotion. He quickly realized the yelling and screaming was coming from the park and ride lot. He indicated to the detective that his view was obstructed by shrubs and bushes in the area.

Jonathan M. heard a male voice yelling "get back, get down on the ground, stop" multiple times. He estimated for detectives that he heard these commands at least six times. He then heard one gunshot and he immediately called 911 from his cell phone. He reported that he had heard a gunshot. He also reported that he continued to hear the same commands repeated several more times.

He then heard three additional gunshots from the area. The witness then walked outside the RV park towards the park and ride lot. As Jonathan M. made his way towards the park and ride he saw that his friend Earl C. was already in the lot standing on the curb. He observed a sheriff's unit parked in the lot. He then observed the deputy with his gun outstretched pointing at a subject who was on the ground. He witnessed that the white male subject continued to move his head around for about 30 seconds before he became still. He also noticed that the subject had blood on his shirt.

He also told Detective Smith that there was a yellow taser lying on the ground about 20 feet west of the deputy. After a few moments additional deputies arrived on scene and

began speaking with him and Earl C.

SUMMARY OF DEPUTY
ALLEN FREEMAN INTERVIEW

Deputy Freeman was assigned as a patrol deputy working from 7:00 – 19:00 hours. He was in a Class A long sleeved Sheriff's uniform with standard Sheriff's insignia and badge and a department approved Sheriff's jacket. He was assigned to a marked Sheriff's Unit. He was assigned on the morning of the incident to a subject check at the intersection of Kickapoo Trail and Twenty Nine Palms Highway in Yucca Valley. The location is a park and ride parking lot.

Deputy Freeman responded to the call and arrived at the park and ride lot located at the corner of Kickapoo Trail and State Route 62. Upon arrival at the location Deputy Freeman saw a white male adult subject standing in the center planter. In the center planter there is a large metal triangle shaped piece of modern art. Deputy Freeman observed the subject standing under the large metal triangle reaching up into the sky acting as if he was pulling things down out of the air.

Deputy Freeman approached the subject, later identified to be Merlyn King, and identified himself as a Sheriff's Deputy. Deputy Freeman asked King what he was doing to which King responded "I have to get these things." He continued to reach up in a manner as if he was attempting to pull items down from the sky.

Deputy Freeman asked King if he had any identification on him. King reached into his pocket and produced his wallet. Deputy Freeman asked him to remove his identification. King responded by removing his ID and handing it to Deputy Freeman. King then took a step backwards.

Deputy Freeman then had dispatch run King's information. Deputy Freeman asked King to have a seat on the curb near where they were standing. At this point King became agitated and told the Deputy that he was invading his space. Deputy Freeman reminded King that he was a Sheriff's Deputy and he needed King to listen to his instructions. Freeman believed that King was either under the influence or might have mental issues. He also noticed that King had a white powdery substance around his nose and on his moustache.

Freeman noticed that King appeared to get very agitated. King then kicked at Freeman twice as they were standing there. Freeman then unholstered his taser and pointed it towards King. King then lunged at Deputy Freeman grabbing at the taser. King attempted to twist it out of Deputy Freeman's hand. Deputy Freeman then pushed King back opening up a few feet of distance from King.

King then lunged at Freeman again. Deputy Freeman then deployed his taser. He believed that he struck King in the stomach with one of the darts. The taser had no effect on King. King began swiping his arms at the wires from the taser. The taser was yanked out of Freeman's hand onto the ground. Freeman was able to kick the taser

behind him out of the immediate reach of King. King again kicked at Freeman.

Freeman then pulled his service weapon and pointed it at King. King then lunged at Freeman again causing the deputy to retreat. As Freeman backed up he gave commands to King to back off and to get down on the ground. King ignored multiple commands and continued to come at the deputy.

King continued to lunge at the deputy and appeared to be reaching for his firearm. Deputy Freeman gave multiple commands to back off and get down. King ignored the commands and continued to lunge and try and grab Freeman's service weapon. Freeman continued to retreat as King advanced on him. Freeman described this as going on for a few moments creating a circular pattern as he retreated and King advanced.

After numerous commands King lunged and got extremely close to Freeman's firearm. Freeman discharged his firearm once hitting King in the hand. King didn't seem shocked by being hit and didn't react like he was in any pain. At that point King yelled out that "This is the blood of God" as he raised the injured hand into the air. He then lunged at Freeman again. Freeman continued to order to him to back off as he retreated.

As King advanced he stepped on the taser and looked down at it. Deputy Freeman ordered him not to touch the taser. King then lunged again attempting to kick at Freeman's hand that was holding his service weapon. At this point Freeman was afraid that King was going to get his firearm from him and shoot Freeman with it. To protect himself, Freeman fired one round striking King in the chest. King lunged forward one more time before collapsing backwards onto the ground.

Freeman called out shots fired. Deputy Meyer was the first deputy to arrive on scene. He arrived within less than a minute after the shooting. Freeman also requested medical aid. When medical aid arrived they determined that King was deceased.

SUMMARY OF KAREN K. INTERVIEW

Karen K. is the mother of Merlyn King. She was interviewed over the phone by Detective Robert Vaccari at her home in Arizona. She told the detective that her son had a long history of mental illness and started hearing voices when he was a teenager. In 2008 her son stabbed her dog to death after hearing voices. After that incident her son spent time in Patton State Hospital. She told Detective Vaccari that her son was a "ticking bomb" and wasn't surprised that something finally happened. She felt it was only a matter of time. She also indicated in the phone interview that her son had used LSD and methamphetamine and refused to take his prescribed medications because he didn't want to be labeled as someone who had a mental illness.

She relayed that Merlyn's behavior would quickly change when something set him off and she never really felt safe with him after the incident with the dog. Karen K. told Detective Vaccari that she didn't want to sound heartless, but that there was a sense of

relief knowing that her son was gone because of his problems and that she knew he was “beyond help.”

AUTOPSY AND TOXICOLOGY REPORT

The autopsy in this case was conducted by Dr. Mark A. Fajardo, M.D. at the Riverside Coroner’s Office on June 2, 2011. The examiner noted two gunshot wounds to the deceased Merlyn King.

Gunshot wound number one had an entrance in the left anterior chest region. There was no associated exit wound. A projectile was located in the left side of the mid back and was recovered. The bullet path included a large hemorrhagic defect to the left ventricle of the heart. The projectile then produced a perforating defect to the lower lobe of the left lung. The bullet trajectory was from front of the body towards the back, minimally upward and left to right.

Gunshot wound number two was to the fifth digit of the right hand causing a subtotal amputation.

Cause of death was determined to be penetrating gunshot wound of chest.
Toxicology analysis conducted by Bio-Tox Laboratories on Merlyn King lists results as:

Alcohol, Ethyl Blood	– 0.00% (w/v)
Amphetamines	– detected
Methamphetamine	– 1.410 mg/L
Amphetamine	- 0.101 mg/L

STATEMENT OF APPLICABLE LAW

Self-Defense

It is lawful to use force against another person if a person reasonably believes there was imminent danger of bodily injury to himself or someone else. The person must reasonably believe that the immediate use of force was necessary to defend against that danger. That person is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation.

In deciding whether the person’s beliefs were reasonable, all the circumstances as they were known to and appeared to that person should be considered as well as what a reasonable person in a similar situation with similar knowledge would have believed. If the person’s beliefs were reasonable, the danger does not need to have actually existed.

CALCRIM 3470.

Self-Defense / Assailed person need not retreat

An assailed person is not required to retreat. He is entitled to stand his ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of bodily injury has passed. This is so even if safety could have been achieved by retreating.

CALCRIM 3470

ANALYSIS

Deputy Freeman responded to a subject acting in a bizarre manner at the incident location. Upon arrival he personally witnessed strange behavior on the part of Merlyn King. Deputy Freeman made contact with the subject and asked him for his identification. The deputy indicated to investigators that he could tell that something was mentally wrong with the subject or that he was under the influence. The deputy also noticed a powdery substance under the subject's nose that he recognized from his training and experience as possibly being a controlled substance.

The subject kicked at the deputy a couple of times placing the deputy in fear that the subject was going to become violent. He attempted to use his taser when the subject failed to comply with multiple demands to back off or get back. Deputy Freeman attempted to deploy his taser which was ineffective. King was then able to swipe the taser out of the deputy's hand. It was now lying on the ground for the subject possibly to pick up. Deputy Freeman continued to issue commands for King to get back.

Even at gunpoint King refused to stop coming at the deputy. He continued to lunge and advance towards Freeman. Deputy Freeman fired one round hitting King in the finger. Despite what would normally be a painful injury, King continued to advance on the deputy. The deputy attempted to back away multiple times while continuing to issue commands. King refused to comply with the commands. Finally, King lunged at the deputy's hand which was holding his firearm. Deputy Freeman feared that King would obtain the gun and shoot him. In self defense, Deputy Freeman fired one more round hitting King in the chest.

All of the witnesses in this case said that Deputy Freeman gave King multiple opportunities to back off and get down. Witnesses indicated he gave up to ten or twelve commands to get down or back off. King did not comply with any of the commands given by Deputy Freeman. Freeman was afraid that King would be able to get a hold of his firearm or the taser that was lying on the ground.

CONCLUSION

Certainly, Deputy Freeman was legally justified in his actions on May 29, 2011. Deputy Freeman showed great restraint in giving so many opportunities for the subject to stop advancing toward Deputy Freeman. Even though Deputy Freeman was not required

under the law to retreat, he attempted to back up multiple times giving Merlyn King a chance to back off and stop being aggressive. The witnesses all told detectives that the deputy gave the King multiple opportunities to deescalate the situation. Deputy Freeman continued to attempt to prevent using deadly force even after his taser was stripped away by King and was within the subject's reach. It was only after King ignored multiple commands and King lunged for his firearm that Freeman fired his handgun. Even after being shot once, King still continued to advance on the deputy. Freeman again retreated and backed up giving King more opportunities to comply. Deputy Freeman went above and beyond to deescalate the situation and only used deadly force when he had no other option.

Given Deputy Freeman's reasonable fear for his personal safety and the fact that the subject was unrelenting in his advances towards the deputy, Deputy Freeman had the right to defend himself with his firearm under the law of self-defense. For the aforementioned reasons, under the laws of self-defense, the shooting by Deputy Freeman was legally justified, and no criminal liability exists on his part.

Respectfully Submitted,

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